

Remarks

This Application has been carefully reviewed in light of the Office Action mailed June 24, 2004. Applicant appreciates the Examiner's consideration of this Application and respectfully provides these remarks. Although Applicant believes all claims are allowable without amendment, to expedite issuance of a patent from this Application, Applicant has made clarifying amendments to Claims 1, 3, 6, 11, 13, 16, 21, 23, 26, and 31-32. Applicant does not consider any of these changes narrowing or necessary for patentability. Applicant respectfully requests reconsideration and allowance of all pending claims.

Dependent Claims 3, 13, and 23 are Definite under 35 U.S.C. §112

The Examiner rejects dependent Claims 3, 13, and 23 as being indefinite under 35 U.S.C. § 112. Although Applicant believes dependent Claims 3, 13, and 23 are definite under 35 U.S.C. § 112 without amendment, to expedite issuance of a patent from this Application, Applicant has amended Claims 3, 13, and 23 to recite *one of the geometrically-shaped icons* and *the geometrically-shaped icon*. For at least these reasons, Applicant respectfully requests reconsideration and allowance of dependent Claims 3, 13, and 23.

Dependent Claims 6, 16, and 26 are Enabled under 35 U.S.C. §112

The Examiner rejects Claims 6, 16, and 26 under 35 U.S.C. § 112 as failing to comply with the enablement requirement. The Examiner states, "The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention." Applicant respectfully disagrees with the Examiner.

"The test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with the information known in the art without undue experimentation." M.P.E.P. ch. 2164.01 (rev. 2, May 2004) (quoting *United States v. Teletronics, Inc.*, 857 F.2d 778, 785 (Fed. Cir. 1988)). There is no requirement that the specification provide concrete examples or illustrations of claimed steps. In fact, "[c]ompliance with the enablement requirement of 35 U.S.C. 112, first paragraph,

does not turn on whether an example is disclosed.” M.P.E.P. ch. 2164.02 (rev. 2, May 2004).

All that is required is that:

[the] information contained in the disclosure of an application must be sufficient to inform those skilled in the relevant art how to both make and use the claimed invention. Detailed procedures for making and using the invention may not be necessary if the description is sufficient to permit those skilled in the art to make and use the claimed invention.

M.P.E.P. ch. 2164 (rev. 2, May 2004). Applicant respectfully submits that Applicant’s Specification provides sufficient information and detail to enable a person skilled in the art at the time of the invention to make and use the claimed invention. To address the Examiner’s rejection, Applicant refers to particular figures and particular portions of Applicant’s Specification, but such references should not be used to limit any of Applicant’s claims.¹

The Examiner asserts:

The claims recite that “the display is three-dimensional and the offer variables corresponding to the dimensions comprise price, quantity, and at least one additional offer variable”, but the dimension is not three dimensional. The display, as understood by the examiner is substantially two dimensional, the dimensions representing price and quantity. While the icons are drawn to represent three dimensions on the two dimensional display, it is noted that the icons can only be manipulated within the two dimension space.

Applicant respectfully disagrees with the Examiner.

Figures 2-4 of the present Application illustrate example displays clearly having three dimensions. Each display includes three axes—a price axis, a quantity axis, and a purity axis—and icons in the display are positioned with respect to each of the three axes according to the values specified in offers corresponding to the icons. As Applicant’s specification makes clear, “per item or other prices for quantities of items for market offers associated with icons . . . may be graphically represented by the locations of [the] icons . . . with respect to a price axis” of the display, “quantities of items for [the] offers associated with [the] icons . . . may be represented by the locations of [the] icons . . . with respect to a quantity axis” of the display, and “purity values for offers may be represented by the locations of icons . . . with

¹ See *Superguide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) (stating that the specification of a patent cannot be used to import limitations into a claim that are not recited in the claim to narrow or otherwise change the ordinary meaning of a claim term).

respect to [a] purity axis” of the display. (Page 10, Lines 1-14). Applicant respectfully submits that such disclosure would clearly enable a person having ordinary skill in the art at the time of the invention to make and use the claimed invention.

Therefore, Applicant respectfully submits that dependent Claims 6, 16, and 26 are enabled under 35 U.S.C. § 112. For at least these reasons, Applicant respectfully requests reconsideration and allowance of dependent Claims 6, 16, and 26.

Independent Claims 1, 11, 21, and 31-32 are Allowable over *Moshal*

The Examiner rejects independent Claims 1, 11, 21, and 31-32 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2002/0032637 to Moshal et al. (“*Moshal*”). *Moshal* merely discloses an interactive user interface that depicts offers in a radial display including only two dimensions. (Paragraph 0025; Figures 1-17). In *Moshal*, circles in the radial display represent offers. (Paragraph 0027; Figures 1-17). Radial distance of a circle from a center of the radial display represents a price or score of the offer, and a position of the circle measured in radians (or degrees) from a reference point in the radial display represents an amount of time that has elapsed since the offer entered an auction. (Paragraphs 0029 and 0033).

In contrast, independent Claim 1 of the present Application, as amended, recites:

A system for providing visualization of market offers, comprising a computer system operable to:

receive offer data for a plurality of offers, the received offer data reflecting values specified in the offers for a plurality of offer variables; and
generate a display of the received offer data, the display comprising:

a plurality of dimensions each corresponding to one of the offer variables for which values are specified in the offers and comprising a range of values of that offer variable, the dimensions defining a multi-dimensional space, each position within the multi-dimensional space uniquely corresponding to a set of values of the offer variables for which values are specified in the offers; and

a plurality of geometrically-shaped icons, each icon representing one of the offers and being positioned with respect to the dimensions of the display according to the values of the offer variables specified in that offer, the different positions of the offers within the display

allowing a user to readily visually compare the offers in connection with a market decision.

Independent Claims 11, 21, and 31-32 recite substantially similar limitations.

The radial display in *Moshal* cannot be properly considered ***a display comprising a plurality of dimensions each corresponding to one of the offer variables for which values are specified in the offers and comprising a range of values of that offer variable, the dimensions defining a multi-dimensional space, each position within the multi-dimensional space uniquely corresponding to a set of values of the offer variables for which values are specified in the offers***, as recited in independent Claim 1. As discussed above, radial distance of a circle in the radial display in *Moshal* represents a price or score of an offer and a position of the circle in the radial display in *Moshal* represents an amount of time that has elapsed since the offer entered an auction.

Even assuming for the sake of argument that radial distance in the radial display in *Moshal* could be properly considered ***a dimension corresponding to one of the offer variables for which values are specified in the offers and comprising a range of values of that offer variable***, *Moshal* would still fail to disclose, teach, or suggest a ***plurality*** of such dimensions, as recited in independent Claim 1. A position of a circle measured in radians from a reference point in the radial display in *Moshal* merely represents an amount of time that has elapsed since an offer entered an auction. Nowhere does *Moshal* disclose, teach, or even begin to suggest that such lapsed time can be properly construed ***one of the offer variables for which values are specified in the offers***, as recited in independent Claim 1. Because an amount of time that has elapsed since an offer entered an auction cannot be properly considered ***one of the offer variables for which values are specified in the offers***, *Moshal* necessarily fails to disclose, teach, or suggest ***a plurality of dimensions each corresponding to one of the offer variables for which values are specified in the offers and comprising a range of values of that offer variable***, as recited in independent Claim 1.

Moreover, *Moshal* fails to disclose, teach, or suggest that each position in the radial display in *Moshal* ***uniquely corresponds to a set of values of the offer variables for which***

values are specified in the offers, as recited in independent Claim 1. Instead, all positions radially equidistant from a center of the radial display in *Moshal* represent offer prices or offer scores that are identical to each other. Therefore, each position in the radial display in *Moshal* does not uniquely correspond to an offer price or offer score.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” M.P.E.P. ch. 2131 (rev. 2, May 2004) (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)). Moreover, “the identical invention must be shown in as complete detail as is contained . . . in the claim.” M.P.E.P. ch. 2131 (rev. 2, May 2004) (quoting *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989)). Furthermore, “[t]he elements must be arranged as required by the claim.” M.P.E.P. ch. 2131 (rev. 2, May 2004) (citing *In Re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990)). As shown above, *Moshal* fails to disclose, teach or suggest, either expressly or inherently, each and every limitation recited in independent Claim 1, as the M.P.E.P. and governing Federal Circuit case law require.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claims 1, 11, 21, and 31-32 and all their dependent claims.

Dependent Claims 6, 16, and 26 are Allowable over *Moshal*

The Examiner rejects dependent Claims 6, 16, and 26 under 35 U.S.C. § 102(e) as being anticipated by *Moshal*.

Dependent Claim 6 of the present Application recites:

The system of Claim 1, wherein the display is three-dimensional and the offer variables for which values are specified in the offers and corresponding to the dimensions comprise price, quantity, and at least one additional offer variable for which values are specified in the offers.

Dependent Claims 16 and 26 recite substantially similar limitations.

At a minimum, Claim 6 depends on independent Claim 1, shown above to be allowable. In addition, *Moshal* fails to disclose, teach or suggest the further limitations recited in dependent Claim 6. As an example, *Moshal* fails to disclose, teach, or suggest *a display that is three-dimensional*. As discussed above, the radial display in *Moshal* includes only two dimensions. Accordingly, *Moshal* fails to disclose, teach, or suggest, either expressly or inherently, each and every limitation recited in dependent Claim 6, which, as discussed above, the M.P.E.P. and governing Federal Circuit case law require.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of dependent Claims 6, 16, and 26.

Conclusion

For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner believes that a telephone conference would advance prosecution of this Application, the Examiner is invited to call Christopher W. Kennerly, Attorney for Applicant, at 214-953-6812.

Applicant believes no fee is due. Nonetheless, the Commissioner is hereby authorized to charge any fee and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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